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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 09-50026-reg

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6 In the Matter of:

7  
8 MOTORS LIQUIDATION COMPANY, et al.

9 f/k/a General Motors Corporation, et al.,

10  
11 Debtors.

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13 - - - - -x

14  
15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18  
19 February 23, 2010

20 9:19 AM

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22  
23 B E F O R E:

24 HON. ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

1 HEARING re Motion of Debtors for Entry of Order Pursuant to 11  
2 U.S.C. Section 105(a) and General Order M-390 Authorizing  
3 Implementation of Alternative Dispute Resolution Procedures,  
4 Including Mandatory Mediation - Status Conference.

5

6 HEARING re Debtors' Objection to Proofs of Claim Nos. 04620 &  
7 07291 Filed by Theresa L. Marchbanks - Status Conference.

8

9 HEARING re Debtors' Sixth Omnibus Objection to Claims (Amended  
10 and Superseded Claims)

11

12 Debtors' Seventh Omnibus Objection to Claims (Duplicate Claims)

13

14 HEARING re Debtors' Eighth Omnibus Objection to Claims (Claims  
15 with Insufficient Documentation)

16

17 HEARING re Debtors' Ninth Omnibus Objection to Claims (Claims  
18 with Insufficient Documentation)

19

20 HEARING re Motion to Withdraw as Counsel for NIDEC Motors &  
21 Actuators and Proposed Order Authorizing the Withdrawal of  
22 Erman, Teicher, Miller, Zucker & Freedman, P.C. as Attorney for  
23 NIDEC Motors & Actuators.

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25 Transcribed by: Sharona Shapiro

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P R O C E E D I N G S

THE COURT: Okay, well start with GM Motors  
Liquidation Company.

Mr. Smolinsky, good morning, come on up, please.

MR. SMOLINSKY: Good morning, Your Honor. If I may,  
I'd like to run through the agenda that was delivered to Your  
Honor yesterday, the final agenda.

First on the agenda, the only contested matter, which  
is now uncontested, is the ADR motion. Your Honor, everyone  
close to this case has recognized over the last several months  
that what this case needed is a process to resolve the  
thousands of unliquidated and litigation claims that have been  
filed against the company. We have tried to resolve claims on  
a one-off basis. We've had some success but minimal success.  
So we're very anxious to get started with a process, primarily  
in the product liability and torts area where most of the  
unliquidated claims reside. Even prosecuting this motion and  
speaking with the various claimants have given us significant  
insight into the claims pool and how best to approach them. Of  
course the attempt would be to try to resolve it before we get  
into the mediation process.

THE COURT: Pause, please, Mr. Smolinsky. In  
ballpark terms, what's the order of magnitude of the number of  
the claims that you have to wrestle with -- not the dollar  
amount; I know that's one of the things you're trying to

1 accomplish by this motion, but the number of them, how many of  
2 these claims you've got to get your arms around.

3 MR. SMOLINSKY: About 10,000.

4 THE COURT: Okay. Continue then.

5 MR. SMOLINSKY: And obviously, Your Honor, we can't  
6 mediate or arbitrate 10,000 claims. So this is going to be  
7 hopefully a collaborative effort with a lot of give and take to  
8 try to get to a consensual resolution. The fact that we have  
9 basically self-insured status up to twenty-five or thirty-five  
10 million dollars makes it more difficult than the average case  
11 to deal with these issues.

12 The procedures that we propose in the motion are  
13 procedures that have been used in other cases in this district.  
14 The one exception is the capping mechanism. In order to avoid  
15 what otherwise would be a very difficult estimation process at  
16 confirmation, we've tried a fairly unique procedure, given the  
17 large number of unliquidated claims, to allow claimants to  
18 voluntarily come in and agree to cap their claim to a number  
19 that we believe works for us in connection with moving forward  
20 with confirmation. And the give and take of that is because  
21 they're willing to cap their claim we would be willing to deal  
22 with their claim first in the mediation process, try to resolve  
23 their claims. Secondly, we'd agree to pay for the mediation  
24 for both sides of the mediation or arbitration. So there is  
25 hopefully incentive on both sides. We have heard some very

1 positive reports back with respect to this procedure. We're  
2 hoping that this will also assist us going forward to try to  
3 make meaningful distributions to creditors as quickly as  
4 possible.

5 The capping procedure allows a party to deliver an  
6 offer, a capping offer, and we can accept it or we can come  
7 back with a counter-offer, and hopefully we would reside on a  
8 number which is more representative of the underlying damages.  
9 And then in exchange for agreeing to that cap we would agree to  
10 fast-track them through the process.

11 There have been, Your Honor, eighteen formal and  
12 eleven informal objections to the procedures. A number of  
13 these objections have been resolved simply by talking to the  
14 claimants about the procedure. We've made a number of  
15 revisions to deal with the other objections that brings us to  
16 an uncontested hearing this morning.

17 I just want to highlight five modifications that have  
18 been made since the original motion was proposed. First of  
19 all, for purposes of today's hearing we're limiting the ADR  
20 procedures to the primary focus of the motion, which is  
21 personal injury, product liability, torts claims, rejection of  
22 contract damage claims and certain indemnity claims.

23 The other types of claims which are like indemnity  
24 claims that are related to asbestos and certain other claims  
25 are going to be adjourned to a hearing. We proposed April 8th,



1 which is another GM hearing, which we'll confirm with your  
2 chambers. But with that we've knocked out a host of objections  
3 and it's given us an opportunity to talk to them about the  
4 procedure.

5 Second, Your Honor, we've carved out environmental  
6 claims totally. We've notified all the parties that have  
7 environmental claims that we will not be going forward in  
8 this motion with respect to environmental claims. We need to  
9 rethink the process of dealing with super-fund claims and the  
10 like. And so, obviously reserving our rights to propose  
11 another ADR program with respect to those claims, we're carving  
12 them out.

13 Third, Your Honor, we filed with this Court weeks ago  
14 a schedule of proposed mediators for the process. The ad hoc  
15 committee of tort claimants have provided additional names.  
16 We've now added those names. Also, in speaking with the ad hoc  
17 committee we have agreed to provide them with a cap for each  
18 mediator that would be a cap on the amount that could be  
19 charged to a claimant.

20 THE COURT: Is that Mr. Bressler's ad hoc committee  
21 or a different one?

22 MR. SMOLINSKY: That is, Your Honor. And with that  
23 cap that they've now reviewed we are in agreement with that  
24 group, which is a very large group of plaintiffs, as to the  
25 appropriate caps that could be charged to an individual

1 claimant. When the ADR notice is sent out they'll get a list  
2 of ADR mediators with schedules of cost and a cap, and they can  
3 pick whichever mediator they want for their particular area of  
4 need, whether it's personal injury or business claims,  
5 rejection damage claims and the like.

6 Independently, Your Honor, we did add a provision  
7 that we thought might be helpful to allow us to pay for the  
8 full amount of any mediator or arbitrator where we've been  
9 provided with evidence of substantial hardship. We thought  
10 that that was something that should be added to ease the  
11 burden.

12 Number four, we've revised the procedures to better  
13 accommodate a free flow of information. There's been a lot of  
14 discussions with the ad hoc committee about how they could get  
15 the information that we have, we could get the information that  
16 they have to make the mediation more productive. And so there  
17 are some changes in the ADR procedures that focus on that.

18 And then finally, we've added some language just to  
19 make sure, which was our original -- certain -- our original  
20 intent that it doesn't preclude a claimant from going after any  
21 non-debtor party if they're subject to the ADR procedures.

22 Your Honor, there are three objections which I just  
23 agreed to make a quick statement on the record to resolve their  
24 objection. Two of them, the Nova Scotia bondholders and the  
25 Andorra Bank, we've agreed, as we always anticipated, the debt

1 claims were not part of this procedure. So we made clear that  
2 their claims under their bonds, and in respect of Nova Scotia  
3 their deficiency claims, are not governed by this ADR motion.

4 Lastly, Your Honor, with respect to Getrag, which is  
5 a vendor, we've agreed to adjourn their claim -- the motion  
6 with respect to their claim to the April hearing to allow their  
7 discussions with New GM with respect to certain contract  
8 terminations to conclude. And hopefully that would resolve any  
9 claims that exist between Getrag and the estate.

10 And Your Honor, I think that's the summary. If Your  
11 Honor has any questions, but I don't believe that there are any  
12 pending objections from third parties.

13 THE COURT: All right. And under my case management  
14 order any objections would have been -- had to have been  
15 previously filed and articulated to the debtor, so we're not  
16 taking any new objections today. I will, however, hear from  
17 anybody who you announced a deal with or an understanding with  
18 to comment on whether or not you got it right.

19 Anybody in that category who wishes to be heard?

20 MS. NOVOSELSKY: Good morning, Your Honor. This is  
21 Jenn Novoselsky at Sidley Austin. We represent the TPC  
22 vendors, and we have previously discussed this with counsel for  
23 GM, but just wanted to get it on the record as well that both  
24 parties have agreed that TPC claims also are not governed by  
25 this ADR motion as well.

1 MR. SMOLINSKY: Your Honor, I believe that that is  
2 one of the claims that are adjourned to April 8th, and in the  
3 definition of subject claims we exclude the category that would  
4 include TPC's claim.

5 THE COURT: Okay. Anyone else?

6 Pause, please, Mr. Smolinsky.

7 Your appearance, please?

8 MS. MITCHELL: Nancy Mitchell from Greenberg Traurig  
9 on behalf of the Nova Scotia noteholders. And I only wanted to  
10 say that Mr. Smolinsky did get it right.

11 THE COURT: Okay, fair enough.

12 All right, everybody who wanted to be heard has now  
13 had that chance.

14 Okay, Mr. Smolinsky, I'm grateful for your ability to  
15 consensually resolve the objections. The underlying merit of  
16 the procedure is obvious to anyone who has reviewed the papers.  
17 Even with the procedures you put in place, the fact that there  
18 may be some that will eventually not be susceptible to ADR  
19 resolutions in one way or another when we're starting with  
20 10,000 is enough to get my attention. I don't know how many of  
21 those 10,000 may remain, but obviously this is something that's  
22 appropriate, it's fair, it's good all around, and it's  
23 approved.

24 MR. SMOLINSKY: Thank you, Your Honor. We'll submit  
25 an order.

1 THE COURT: Very good. Do you have other stuff you'd  
2 like to bring to my attention, Mr. Smolinsky?

3 MR. SMOLINSKY: Not with respect to that motion, but  
4 we have several other matters that I'd like to run through.  
5 After the next one they'll run very quickly.

6 THE COURT: Sure, go ahead.

7 MR. SMOLINSKY: Your Honor, the next motion is an  
8 objection to two claims filed by Ms. Marchbanks. This motion  
9 is representative of a host of claims, which I think Your Honor  
10 just mentioned, may not be susceptible to ADR. These are -- we  
11 have dozens of claims filed by individuals for outrageous  
12 amounts, and we've tried to do the appropriate thing to try to  
13 give full deference to the fact that they're pro se, that we  
14 want to give them every bit of due process that we agree on and  
15 that Your Honor agrees on. We've sensitized the whole claim  
16 team in this case, not only at the law firms but also with the  
17 company to be patient with every claimant and to try to get at  
18 the basis for the claim as best that they could.

19 Your Honor, these claims which each were -- one was  
20 filed in the amount of 2.5 billion dollars. The other --

21 THE COURT: With a B?

22 MR. SMOLINSKY: B, yes. The other one just said  
23 22.5; I don't know what that is, but it may be a reference to  
24 the same 2.5 billion.

25 Your Honor, attached to the motion is a letter that

1 we had sent to Ms. Marchbanks prior to bringing this motion  
2 asking her to provide background on the claim. The claim is --  
3 it just says "personal injury" but nothing else, and it also  
4 seeks a 10,950 dollar priority for wages. We've looked at our  
5 records. We don't have any record of an action that has been  
6 brought by Ms. Marchbanks or the fact that she was an employee.

7 After exchanging e-mails with her where she did --  
8 she said 'I gave you everything you need, what else do you  
9 need?' We again sent an e-mail explaining why we needed it and  
10 tried to avoid this hearing. We got no reply to that e-mail.  
11 We then filed the motion. We got no reply to the motion. We  
12 attempted to e-mail -- to call her on February 8th, two days  
13 before this motion was originally scheduled. The number that  
14 she provides in her proof of claim is no longer in service. We  
15 e-mailed her to the same address that she e-mailed us on the  
16 8th and the 9th and we got no response. After this hearing was  
17 adjourned as a result of the snowstorm we then sent her a  
18 letter on February 16th, again requesting her to contact us to  
19 provide us with information and reminding her of the hearing  
20 today for which we received no response. Ordinarily that would  
21 clearly be grounds for taking a default.

22 I did want to highlight for this Court the fact that  
23 in connection with the ADR motion she did take the attachment  
24 from the ADR motion, which is the ADR notice and the settlement  
25 procedures, she mailed it back to us and checked off that she

1 accepted our settlement offer even though the settlement offer  
2 of course was blank. And she checked off that she's willing to  
3 go into binding arbitration. Yet we received no response or no  
4 information relative to her claim in connection with the  
5 objection motion.

6 And Your Honor, we're now faced with a decision as to  
7 whether to go forward today and take the default or to try one  
8 more time to reach out to her. But so far our attempts have  
9 failed. I don't think that this claim is necessarily  
10 susceptible to binding arbitration where we would go into the  
11 arbitration not knowing any background as to the basis of her  
12 claim.

13 So Your Honor, you know, we're prepared to go forward  
14 today but we're also prepared to listen to Your Honor. Perhaps  
15 Your Honor has had experience in other cases that we can use in  
16 this case. Again, this is not a one-off situation but  
17 something that we're going to have in the future.

18 THE COURT: Mr. Smolinsky, is this the same claimant  
19 or a different one than the claimant as to whom I issued an  
20 endorsed order a day or two ago where after reading the  
21 claimant's submission quite carefully I determined that the  
22 motion was denied for failure to establish a prima facie  
23 entitlement to relief?

24 MR. SMOLINSKY: If that's the one, Your Honor, that  
25 questioned whether or not Your Honor was an active judge for

1 this court, that is a different claimant. That is Lefonso  
2 Washington (ph.) --

3 THE COURT: Right.

4 MR. SMOLINSKY: -- which will be on before you on the  
5 2nd of March.

6 THE COURT: Fair enough.

7 MR. SMOLINSKY: At least he gives thousands of pages  
8 of information that we could try to glean a claim. A lot of  
9 these claims are simply just cover sheets.

10 THE COURT: Including the fact that I don't have  
11 jurisdiction to sit in a bankruptcy court?

12 MR. SMOLINSKY: That's right.

13 THE COURT: Okay. Mr. Smolinsky, I'm grateful that  
14 you and your colleagues have given special attention to the  
15 needs of pro se claimants, and although it's costing you extra  
16 time and resources and ultimately creditor money to do it, I  
17 would like that to continue. But there comes a time when I  
18 think that you and your folks have done all that we can  
19 reasonably expect, and I don't think it's fair to the other  
20 creditors to ask you to do any more.

21 If I were sitting on the Supreme Court and not way  
22 down on the bankruptcy court, I would have stuck with the  
23 standards of Conley v. Gibson in evaluating claims to see  
24 whether the judge can ascertain a basis for awarding relief.  
25 And in those cases where the pro se claimant has expressed his



1 or her claim inarticulately or has given you some but less than  
2 all of the documentation you need, I'm inclined to cut people  
3 some slack and give them a chance to get their house in order.

4 But in the case of Ms. Marchbanks where you don't get  
5 any showing of an entitlement or where they don't respond to  
6 your e-mails or your other messages, I think you've done all  
7 that the fairness of the system should require, and I'm going  
8 to give you the default in that situation. And give the word  
9 to the folks that going forward that if you're imperfect in  
10 documenting your claim I'll likely give you a chance to cure  
11 but if you don't respond to the estate at all I'll be entering  
12 further defaults similar to the one I'm doing today.

13 MR. SMOLINSKY: Thank you, Your Honor. Do you want  
14 us to settle an order or just submit it?

15 THE COURT: Well, if there had been a response I  
16 would have required you to settle the order. There having been  
17 no response, you may submit it.

18 MR. SMOLINSKY: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. SMOLINSKY: And as with all other orders of claim  
21 objections, we'll serve a copy of the order out to the  
22 claimant.

23 THE COURT: The rule of thumb being if the person  
24 tried to get my attention and ultimately did not prevail I'll  
25 want you to settle. If they don't meet you halfway you can

1 submit.

2 MR. SMOLINSKY: Thank you, Your Honor.

3 THE COURT: Okay.

4 MR. SMOLINSKY: Moving to item number 3 on the  
5 agenda, that's omnibus debtors' motion number 6, amended and  
6 superseded claims. We've received no responses to that motion,  
7 no objections, and we'd like to move forward.

8 THE COURT: Granted.

9 MR. SMOLINSKY: Item number 4, a debtors' seventh  
10 omnibus objection that is duplicate claims. We received two  
11 responses, one from Atlas Technologies, which we've spoken to  
12 and it's not an objection to the relief requested in the  
13 motion. And secondly from the Casmalia Resources Site Steering  
14 Committee. We've agreed to withdraw the motion with respect to  
15 Casmalia, and we'd like the rest of the relief granted.

16 THE COURT: Okay, that's fine.

17 MR. SMOLINSKY: Thank you, Your Honor.

18 The next item on the agenda, item number 5, debtors'  
19 eighth omnibus objection. These are claims with insufficient  
20 documentation. Your Honor, we have made clear to claimants  
21 that if they give any type of information in response to this  
22 motion that we've excluded them from the treatment in the  
23 motion and have withdrawn the motion and we notified them of  
24 that effect.

25 There are two claims with insufficient documentation

1 motions. It's the eighth and then the ninth, which is item  
2 number 6. We've added to those orders, just to make clear --  
3 we really don't know what those claims are about but we added  
4 language making it clear that the expungement of the claim  
5 doesn't effect any workers' compensation claims that would be  
6 entitled to treatment from New GM, just to make clear because  
7 we suspect that some of them may be workers' comp claims.

8 We've also added to the order an order paragraph  
9 which provides that if you hold a debt security and your claim  
10 is being expunged it does not preclude you from participating  
11 in recoveries under claims that are filed by the indenture  
12 trustees.

13 THE COURT: Um-hum.

14 MR. SMOLINSKY: So hopefully that will give comfort  
15 to -- there were some accounts that were IRA accounts. I think  
16 you could kind of maybe figure out that it's some kind of  
17 security. So we've added that language to make clear, and as  
18 again, we'll serve a copy of the order on all the claimants.

19 THE COURT: In fact, obligations on debt securities  
20 were scheduled by the debtors as well, weren't they?

21 MR. SMOLINSKY: That's correct, Your Honor, and we're  
22 working on stipulations.

23 THE COURT: Right, okay.

24 MR. SMOLINSKY: So that takes care of items number 5  
25 and number 6.

1 Your Honor, just one note on the seventh omnibus  
2 objection. There is a claim filed by Nidec Motors. It's a  
3 100,000 dollar claim and it's a duplicative claim which we're  
4 getting rid of. In connection with that motion that was filed  
5 we got a call from counsel to Nidec Motors -- and I'm now  
6 moving to item number 7 on the agenda. Counsel told us that he  
7 has not been able to contact his client and therefore filed a  
8 motion to withdraw as counsel.

9 We have no objection to him withdrawing. We did want  
10 to note that he could not reach his client even before the  
11 claim was filed so he filed a protective claim in the amount of  
12 100,000 dollars, a 503(b)(9) and for goods sold. He had no  
13 idea when he was filing that motion whether or not there was  
14 any obligation. This is -- Nidec is not a U.S. company. And  
15 we would like his help in trying to withdraw the claim or at  
16 least provide us with information that would allow us to  
17 expunge that claim, given the fact that there's no real  
18 background or basis for the claim in the first place.

19 MR. EISENBERG: Your Honor, this is David Eisenberg  
20 from Erman, Teicher, Miller, Zucker & Freedman --

21 THE COURT: Yes.

22 MR. EISENBERG: -- and I am the attorney that Mr.  
23 Smolinsky talked to regarding our motion to withdraw. And I  
24 just want to note that up to the bar date for the 503(b)(9)  
25 claims we had contact initially with our client who had

1 indicated that they had unsecured claims in this proceeding and  
2 they also believed they had a 503(b)(9) claim.

3 Leading up to the bar date to file the 503(b)(9)  
4 claim we were not able to contact our client. We had  
5 repeatedly requested information on the 503(b)(9) claim,  
6 repeatedly advised of the impending bar date, and were not able  
7 to get any information. So we did in fact file an estimated  
8 503(b)(9) proof of claim.

9 I did not -- we did not file the claim with  
10 absolutely no information and having no knowledge that there  
11 was a claim at all. Rather, when we began the engagement with  
12 our client they had indicated that they did have a twenty-day  
13 claim. However, at the time that the bar date arose we didn't  
14 have any of the backup information or the exact figures.

15 THE COURT: Um-hum.

16 MR. EISENBERG: So when I -- earlier when speaking  
17 with Mr. Smolinsky and some other attorneys at Weil, they had  
18 indicated that should the Court grant our motion to withdraw  
19 they would provide an extra thirty-day notice on the claims  
20 objection to Nidec.

21 THE COURT: Okay. Well, Mr. Eisenberg, I didn't hear  
22 Mr. Smolinsky asking for any 901(1) relief, and recognizing the  
23 practical box you are in I'm not of a mind to do anything on my  
24 own motion. But here's what I want to do because, again, I  
25 have to consider not just the fairness to Nidec but to the

1 remainder of the creditor community. But a question first to  
2 either you, Mr. Eisenberg, or Mr. Smolinsky. How much time has  
3 Nidec now had to respond to your motion to withdraw?

4 MR. EISENBERG: They've had at least -- well, they've  
5 probably had four weeks or so.

6 THE COURT: And to the knowledge of either you or Mr.  
7 Smolinsky there has been no response to that request?

8 MR. EISENBERG: Well, Your Honor, I can provide some  
9 additional information. After we filed the motion to  
10 withdraw -- now, previous to the motion to withdraw we had  
11 communicated with Nidec requesting that they stipulate to allow  
12 us to withdraw. We ended up filing the motion because we got  
13 no response. And in the interim, prior to the original  
14 February 3rd response deadline we got an e-mail from our client  
15 contact acknowledging that she had received the motion,  
16 requesting that we reconsider. And I replied to the e-mail  
17 saying that we did not want to reconsider, we wanted to move  
18 forward with the motion, and considering as much whether they  
19 would, again, stipulate to our withdrawal. I did not receive a  
20 response to that e-mail. I advised our client contact of the  
21 response deadline, the original hearing date, and when the  
22 hearing date was rescheduled I again used the same e-mail and  
23 advised of the new hearing date.

24 THE COURT: Okay. All right, Mr. Smolinsky, any  
25 further comments before I rule?

1 MR. SMOLINSKY: Your Honor, the only other comment is  
2 I referred to omnibus motion number 7 because that is a  
3 duplicative claim that we are seeking to expunge. In theory,  
4 Mr. Eisenberg filed two claims and we should be able to expunge  
5 one as part of omnibus 7. If you'd like the thirty days that  
6 Mr. Eisenberg was talking about we can re-notice that motion  
7 with respect to the Nidec duplicative claim for another thirty  
8 days, but it doesn't undo the fact that we still would have a  
9 second claim out there.

10 THE COURT: Well, the duplicative claim, it seems to  
11 me, is a no-brainer --

12 MR. SMOLINSKY: Um-hum.

13 THE COURT: -- because by definition the underlying  
14 claim would remain. The question may be for today or may be  
15 for another day but I assume that either you or the creditors'  
16 committee is going to want to knock out the original claim at  
17 some time going in the future. And Mr. Eisenberg, Mr.  
18 Smolinsky was just nodding yes but it wasn't audible. And  
19 that's where Mr. Eisenberg's motion is going to become more  
20 relevant.

21 The motion to strike the duplicative claim is  
22 granted.

23 Mr. Eisenberg, if your motion to withdraw has been  
24 pending for the four weeks you said -- and I have no reason to  
25 doubt your representation to me in that regard -- I am going to

1 grant your motion asking -- excuse me, directing that you  
2 settle an order so providing, at your earliest reasonable  
3 convenience.

4 Now, on the underlying motion -- excuse me, claim,  
5 the one that remains after me having stricken the duplicative  
6 one, my tentative, subject to people's rights to be heard,  
7 given what Mr. Eisenberg acknowledged, is that I should today  
8 be issuing an order that strikes the original claim as well,  
9 unless people are concerned about its due process implications,  
10 and providing that Nidec has a fixed period of time -- and I'm  
11 thinking thirty days -- to file a new claim that's properly  
12 documented that will be deemed to have been as timely as the  
13 original one. But I have concerns about the integrity of the  
14 process with that claim lying out there. And I'll hear from  
15 you, Mr. Smolinsky, and you, Mr. Eisenberg, as to whether that  
16 cuts due process a little too fine and whether you have a  
17 preferred approach, or whether you would like to simply tee  
18 this up going forward for a dismissal, Mr. Smolinsky, with  
19 notice to Nidec with Mr. Eisenberg having been excused from  
20 having to participate any further.

21 MR. SMOLINSKY: Your Honor, I'm not sure I have a due  
22 process concern because we're effectively setting a new bar  
23 date. I would be concerned to the extent that they could file  
24 a claim in excess of 100,000 dollars which was the amount of  
25 the original claim. I don't think that there's a basis to get



1 a benefit from what they've done and to allow them to file a  
2 claim in excess of that that's already on file.

3 THE COURT: Mr. Eisenberg, it wasn't audible, but I  
4 was kind of nodding in agreement to what Mr. Smolinsky said.  
5 Do you want to be heard on that?

6 MR. EISENBERG: Well, I don't really have the  
7 objection on the due process grounds either, but I'm not  
8 exactly sure what to say to what Mr. Smolinsky said. I suppose  
9 it's up to Your Honor. Having no idea of what the -- you know,  
10 what the true amount is, if any, I would hate to have Nidec be  
11 limited to 100,000 dollars or less if in fact it is greater.

12 THE COURT: Well, folks, the problem I have is that  
13 when a claim has been filed in good faith the amount for which  
14 the claim has been originally filed is not always a cap on its  
15 ultimate allowance. But I certainly don't want to pre-judge  
16 that issue now. Ultimately what I'm going to do is divert a  
17 little bit from my tentative.

18 Your motion to be -- authorize to withdraw is  
19 granted, Mr. Eisenberg.

20 MR. EISENBERG: Thank you, Your Honor.

21 THE COURT: Mr. Smolinsky, have one of your folks tee  
22 up the underlying claim for expungement at such time as you  
23 want to do it. The original claim in that 100,000 dollar  
24 amount will remain for the time being. And then you'll  
25 certainly have the -- if there is a response then we'll see

1 what Nidec says about what their claim is. And there will have  
2 to be a time, to state the obvious, at which Nidec will have to  
3 show its entitlement to the allowance of the claim which has  
4 been filed, not to mention any additional incremental amount  
5 for which it might seek relief. Your right to contend that it  
6 shouldn't exceed 100,000 will be reserved, and if Nidec has  
7 arguments to the contrary I'll hear what it has to say as well.

8 MR. SMOLINSKY: Thank you, Your Honor. I think that  
9 that's prudent to just file an objection to the claim. I would  
10 only ask Your Honor to direct -- and it doesn't need to be in  
11 the order -- that within five or ten days Mr. Eisenberg  
12 delivers to us all the addresses and contact people that he has  
13 been dealing with because we only have his law firm as  
14 appropriate address to serve that objection.

15 THE COURT: Mr. Eisenberg, I'll take your oral  
16 promise, if you want to give it to me. Otherwise I'll -- I  
17 think I'll want it in the order.

18 MR. EISENBERG: I will provide the information I  
19 have, Your Honor.

20 THE COURT: Okay. Then you don't need to put it in  
21 the order since he told us that, Mr. Smolinsky.

22 Okay. Mr. Eisenberg, does that take care of that  
23 seventh omnibus objection?

24 MR. EISENBERG: Yes, it does, Your Honor.

25 THE COURT: Then you can drop off the phone if you

1 care to.

2 MR. EISENBERG: All right, thank you, Your Honor.

3 THE COURT: Okay. What else have we got, Mr.

4 Smolinsky?

5 MR. SMOLINSKY: I think that's it, Your Honor.

6 THE COURT: Okay, very good. Thank you. And anybody

7 who was here just on GM is free to leave and I'm going to just

8 sit in place; we're going to start in on the 9:45 calendar now.

9 MR. SMOLINSKY: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Whereupon these proceedings were concluded at 9:52 AM)

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I N D E X

RULINGS

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Debtors' motion for authority to implement alternative dispute resolution procedures, including mandatory mediation - approved	12	23
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Debtors' seventh omnibus objection to Duplicate claims - granted	18	16
Debtors' eighth and ninth omnibus objections to claims with insufficient documentation - granted	19	23
Debtors' seventh omnibus objection to duplicate claims of Nidec Motors - granted	23	21

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I N D E X

RULINGS (Contd.)

Motion for Erman, Teicher, Miller, Zucker	23	23
Zucker & Freedman, P.C. to withdraw		
as counsel for Nidec Motors & Actuators		
- granted		

C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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SHARONA SHAPIRO

AAERT Certified Electronic Transcriber (CET\*\*D-492)

Veritext

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Date: August 24, 2010